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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/644,402	08/20/2003	Matthew Chverchko	21757-0002	7919

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EXAMINER

PATEL, KIRAN B

ART UNIT	PAPER NUMBER
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3612

DATE MAILED: 08/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/644,402

Applicant(s)

CHVERCHKO ET AL.

Examiner

Kiran B. Patel

Art Unit

3612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) 16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

Non-Final Rejection

### **Election/Restriction**

1. Applicant's election with traverse of Species A, claims 1-20 is acknowledged. The traversal is on the ground(s) that search for the additional Species would not create an undue burden upon the Examiner. This is not found persuasive because search for the additional Species would create an undue burden upon the Examiner.

Further, claim 16 are withdrawn by the Examiner from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species.

During a telephone interview with Mr. Ehresman the election was further amended and claims 17-20 were canceled, as they read on non-elected invention.

The requirement is still deemed proper and is therefore made FINAL.

### **Claim Rejections - 35 USC § 112**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-15, as best understood, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-15, "the cover is of sufficient strength to support a significant top load" fails to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-9, 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Bogard (6,082,806).

Regarding claims 1-9, 12-13, Bogard (6,082,806) discloses in Fig. 1-16 the invention as claimed to include a cover 20, two panels 26, 27, aluminum thin rigid

casing 28 (col 2, lines 65-66), a plurality of horizontal structural members 29, bedrails 24, a storage compartment 21, one panel secured to the bedrails (Fig 13), a hinge 42, locking means (col 3 line 61 to col 4 line 5).

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 10-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogard (6,082,806) in view of Block et al. (6,234,559).

Regarding claims 10-11, Bogard (6,082,806) discloses the invention as claimed.

However, Bogard (6,082,806) does not disclose water resistance means to include gutter.

Block et al. (6,234,559) discloses in Fig 1-9 water resistance means to include gutter (col 3, lines 50-60).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention, as disclosed by Bogard (6,082,806), to include water resistance means to include gutter, as disclosed by Block et al. (6,234,559), to render the cover substantially water resistance when closed and channel water run off.

5. Claims 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bogard (6,082,806) and in view of Massey (6,616,210).

Regarding claims 14-15, Bogard (6,082,806) discloses the invention as claimed.

However, Bogard (6,082,806) does not disclose support means to include gas spring.


Massey (6,616,210) discloses in Fig 1-12 support means to include gas spring (Fig 7).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the invention, as disclosed by Bogard (6,082,806), to include support means to include gas spring, as disclosed by Massey (6,616,210), to maintain at least one other panel in an open position.

**Conclusion**

6. The prior art made of record in attached Notice of Reference Cited (PTO-892) and not relied upon is considered pertinent to applicant's disclosure. This art of record shows various features similar to the applicant's invention.

7. Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Kiran B. Patel whose telephone number is 703-305-0254. The examiner can normally be reached on M-F from 8:00 to 5:00. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

  
Kiran B. Patel, P. E.  
Primary Examiner  
Art Unit 3612  
July 24, 2004